

## **Submission - Electoral (Voter's Choice) Amendment Bill 2019**

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We thank the committee for the opportunity to make comments on the *Electoral (Voter's Choice) Amendment Bill 2019*. While the bill has a very narrow focus and is highly unlikely to be adopted before the next state election, the submitters here are keen to talk about electoral reform and we would like to take the opportunity to discuss issues around compulsory and optional preferencing, as well as provide some alternatives that might satisfy some of the criteria set out by the shadow attorney general, Mr. David Janetzki MP in his introductory speech.

### **The Criteria Set by the Bill**

The explanatory notes highlight three key policy objectives those are:

- Restore public confidence in the electoral system by reintroducing a voting system recommended by the Electoral and Administrative Review Commission, which was established upon recommendation of the Fitzgerald Inquiry;
- Give voters more options to express their political opinions, while preserving the voting choice available under full preferential voting; and
- Least likely lead the voter to invalidate his or her vote through numbering error because of its simplistic nature.

### **The EARC Review**

Electoral and Administrative Review Committee (EARC) did make a recommendation that supports the assertion that is mentioned in the explanatory notes, it states:-

*"EARC endorses optional preferential voting because under a compulsory preferential system voters who do not have a complete set of preferences must either "invent preferences, or arbitrarily assign rankings to candidates about whom they know nothing and care less or accept that their ballot paper will be excluded from the scrutiny" (paragraph 6.24 ). EARC concludes "that it is inappropriate for the electoral system to corral votes on behalf of candidates or parties who electors do not wish to support but merely consider less objectionable than the other(s) on the ballot paper"*<sup>1</sup>

The principle that was stated is about freedom of choice, not forcing voters to express preferences that are disingenuous<sup>2</sup>.

It should be noted a submission by the National Party to the ESRC supported Compulsory Preferences, and the ALP submission broadly supported a position of optional preferences with saving provisions for numbering mistakes<sup>3</sup>. That is quite different to now, with their positions inverted and this is generally construed to reflect nothing more than partisan political advantage on the issue having shifted rather than reflecting any principled position.

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<sup>1</sup> PCEAR (1991) *Report No 5 - Queensland Legislative Assembly Electoral System*, <https://www.parliament.qld.gov.au/documents/committees/PCEAR/1990/earc/pcear-report5.pdf> Accessed 24 October 2019 (pg 10)

<sup>2</sup> Ibid, pg 10

<sup>3</sup> Ibid, pg 11

Indeed one of the more fundamental issues with electoral reform in the post-Fitzgerald Inquiry era is that changes to the system are often only done with the approval of a sitting government looking to make specific changes in their advantage, and occasionally changing them again if the circumstances change.

## **Voter Options to Express Political Opinions**

Certainly the goal of allowing voters to express opinions freely is a noble goal, and certainly optional preferencing gives the appearance of such freedom, but it is an appearance that comes with a very significant democratic deficit that the Alternative Vote system that is in use in Queensland at least partially but insufficiently addresses.

The value of the Alternate vote is the mitigation of the spoiler effect, which is about splitting votes between candidates of similar ideologies that allows a candidate of an opposing ideology to win instead. In the Alternative Vote system, the use of single transferable votes mitigates this risk by allowing a ballot to count towards the most popular of the transferable options a voter indicates.

Optional preferential voting can devolve into a virtual de facto version of a first-past-the-post system, all the more so with whichever of the ALP or LNP will benefit actively and substantially advocating for 'Just vote 1'. This results in an even less proportional parliament than the already significantly unrepresentative parliament achieved with the status quo.

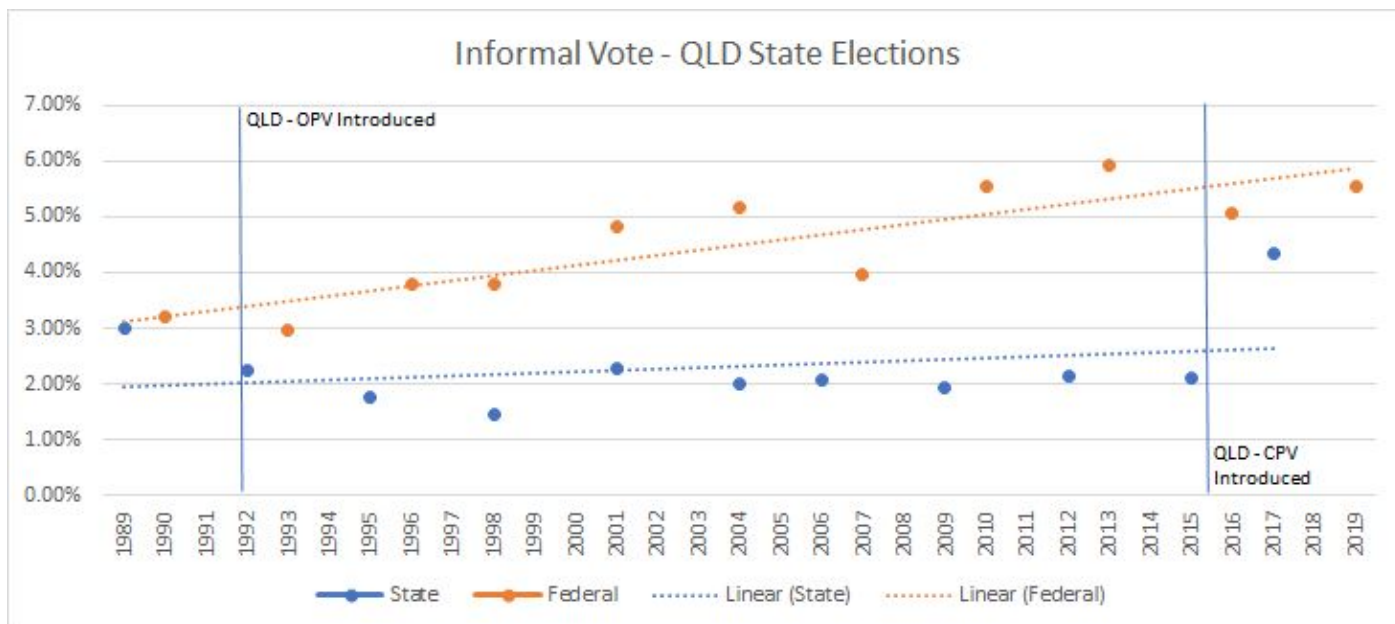
This means that between OPV and CPV there is a trade-off between mitigating spoilers and allowing voters a degree of freedom on their preferences. The problem with adopting one over the other will be that the ultimate goal of turning a set of votes into a representative parliament will be compromised.

OPV could further entrench the two-party system, and facilitate minority rule where a party without a plurality of support could control a majority of the seats in the parliament. It also has to be kept in mind that under OPV a vote that exhausts effectively means that the voter likely had no effect on determining the outcome of the election.

For CPV the problem is seen to be some voters disingenuous preferencing, where voters have no or negative opinions of a candidate, but are forced to express a preference for that candidate regardless. However while the order of elimination of candidates can in some relatively rare circumstances affect the outcome of elections in individual seats due to when preferences are distributed, from the voter's perspective their vote will end up with their least objectionable of the two parties still in the count. It is unlikely these two parties are equally objectionable to the voter, and the voter had an influence in determining the lesser of two evils rather than no influence at all.

## **Informal Voting**

The last assertion mentioned in the explanatory notes is that there has been an increase in informal voting due to the use of different preferencing systems between levels of Government. To give some context for that, the below chart shows informal voting rates at elections since 1990 in both the state and federal field, we have also added the years that the preferencing system was changed (Federal was consistently CPV over this time)



As can be seen in the figure the last state election did experience a sudden increase in informal votes after the introduction of CPV, but there also appears to be a long-term trend of increasing informal voting, but was still lower than the informal rate for federal elections both before and after the 2017 State election. At both the federal and state levels, there also appears to be a trend towards increased informal voting that is not accounted for by preferencing systems alone.

## Conclusions

Restoring public confidence in the electoral system requires addressing the actual issues undermining the confidence which come down to the disconnect between how the electorate votes and the composition of the resulting parliament. The lack of proportional representation, a clear correlation between votes and representation is of far greater salience than compliance with the recommendations of a 30 year old report.

In that vein, we would like to make a few suggestions for the benefit of MPs considering changes moving forward.

### ***Public reviews of the electoral system***

The last formal mechanism for monitoring the outcomes of elections as an independent function was the Parliamentary Committee for Electoral and Administrative Review (PCEAR). On it's closure along with the EARC it noted at the time that the task of the committee and the EARC had been completed and that the tasks covered by the committee could be absorbed into other functions and commissions<sup>4</sup>.

There is certainly an argument that with multiple accusations of changing electoral systems for political gain that it would be worth having regular reviews of the electoral system that had less interference directly from political parties and members. It would be worth developing a regular review of the functions of the electoral system and the Electoral Commission of Queensland by a citizens' jury of registered voters appointed by sortition. This body would evaluate and suggest reforms to be considered by the legislative assembly roughly in line with the scheduling of

<sup>4</sup> PCEAR (1994) Review of Closure of the Electoral and Administrative Review Commission  
<https://www.parliament.qld.gov.au/documents/committees/PCEAR/1990/earc/pcear-report23.pdf> Accessed 24 October, 2019

redistricting activities (though we would suggest doing this review well before any redistricting process to allow for the creation and implementation of any suggested reforms).

It is a technically small reform, and the parliament will maintain control of electoral law, but the citizens' jury would be a better judge of public interest in reforms than those invested in the status quo.

### ***Proportional Representation***

The problem with the sort of tinkering that is being proposed in this bill is the marginal effects such changes would have on electoral outcomes and their alignment to the preferences of the voting public at large. Certainly if the goals of this bill is to promote the importance of primary votes over preferences, then it should also expand to making sure that representation is reflected as a proportion of primary vote, which leads us to a conversation about changing our electoral system to a proportional system.

Here we provide two suggestions currently in use in our region that would satisfy certain criteria that are mentioned by the review and in general on electoral reform. We urge members to consider their merits for the representation of the electorate at large separate from the political consequences for themselves or their political party (as difficult as that may be).

### ***The Aotearoa/New Zealand Model - Mixed Member Proportional***

Aotearoe/New Zealand has been operating their electoral system under Mixed Member Proportional representation (MMP) since the 1996 referendum into electoral reform, replacing the single-member First Past the Post system that had been in place previously.

Mixed member proportional is combined 2-mode or mixed election system that draws its representatives from single member electorates and party-lists. Around half of the open positions will be decided by single-member electorates, in New Zealand, those are FPTP districts, but technically any system could be used that elects a single member to a district including both OPV and CPV.

The remaining half are decided by the proportions of primary votes gained by parties and blocks, with a proportion of MPs being given to each party to balance the disproportionality from the single-member electorates, the members in each of these positions are decided by a party list predetermined by each voting block before the election.

One of the key advantages is that local representation is maintained with proportionality introduced. As generally implemented it wouldn't considerably increase the complexity of counting the election and would require only minor changes to ballots.

There are also possible alternatives that would allow voting to remain as is with CPV or as would be with OPV, thus satisfying the second and third objectives outlined for the bill, giving voters more options to express their political opinions, while preserving the voting choice available under full preferential voting; and making it unlikely for the voter to invalidate his or her vote through numbering error because of its simplistic nature.

MMP does have a tendency toward coalition rather than majority governments, however this is a characteristic of all proportional systems and part of the reasoning behind a change like this is broader diversity in governance.

### ***The Tasmanian Model - Hare-Clarke Single Transferable Voting***

Tasmania has been operating with Hare-Clarke since 1992, with the system also in use in the ACT assembly. Hare-Clarke is a very developed electoral process, with many set rules around candidate ordering on ballots (random by Robson rotation), the handling of parties (lists, but no group voting), preference allocations (minimum to the number of representatives) and casual vacancies (countbacks), but from a purely electoral counting point of view, Hare-Clarke is a form of Single Transferable voting.

The state is broken up into equally proportioned districts (which in Tasmania, coincides with the borders of their 5 federal electorates) with an equal number of positions allocated to each district to make the multi-member districts. The vote is counted in traditional single alternate vote style, a droop quota is calculated for the district, which is the target for the candidate to achieve, if a candidate exceeds that value they are elected and a fraction of their vote in proportion of their votes over quota is transferred, if no candidate hits the target, then the candidate with the smallest current vote pool is excluded and their votes distributed until all positions are filled.

Hare-Clarke has less direct representation by MPs, but still maintains areas of interest largely (though on a more macro scale than with smaller single-member districts), it also has a higher threshold value for the election than MMP would have on its own based on the quota system. It does tend to be less proportional than MMP, but it does more often deliver majority government than MMP, but only slightly. The other drawback is the more complicated voting papers associated with multi-member districts, which may have an effect on informal voting, especially if the number of candidates is quite high which also would mean a slight increase in election costs both in printing (Robson rotation can be quite expensive to print for) and counting ballots.

## **Summary**

Once again, we thank the committee for considering our submission, we hope that the information that we have provided goes some way to helping you make decisions on not only this bill but future electoral reform bills.